

Gary S. Graifman (*Pro Hac Vice*)
Melissa Emert (*Pro Hac Vice*)
**KANTROWITZ, GOLDHAMER,
& GRAIFMAN, P.C.**
135 Chestnut Ridge Rd. Suite 200
Montvale, NJ 07645
(201) 391-7000; Fax (201) 307-1086
ggraifman@kgglaw.com
memert@kgglaw.com

William B. Federman (*Pro Hac Vice*)
FEDERMAN & SHERWOOD
10205 N. Pennsylvania Avenue
Oklahoma City, OK 73120
(405) 235-1560; Fax: (405)-239-2112
wbf@federmanlaw.com

Nicholas Migliaccio (*Pro Hac Vice*)
Jason Rathod (*Pro Hac Vice*)
MIGLIACCIO & RATHOD LLP
412 H St NE #302
Washington, D.C. 20002
(202) 474-9111; Fax: (202) 800-2730
nmigliaccio@classlawdc.com
jrathod@classlawdc.com

Co-Lead Counsel for the Proposed Class

[Additional Counsel Listed on the Signature Page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MICHELLE SALINAS, RAYMEL
WASHINGTON, and AMANDA
GORDON, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

BLOCK, INC. and CASH APP
INVESTING, LLC,

Defendants.

Hon. Magistrate Judge Sallie Kim

Case No.: 3:22-cv-04823

**PLAINTIFFS' NOTICE OF MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR AWARD OF ATTORNEYS' FEES AND
COSTS, AND SERVICE AWARDS**

DATE: December 16, 2024

TIME: 9:30 A.M.

CTRM:

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on December 16, 2024 at 9:30 a.m., or as soon thereafter as the matter may be heard of the above-captioned case before the Hon. Magistrate Judge Sallie Kim, Plaintiffs Michelle Salinas, Raymel Washington, and Amanda Gordon (collectively, “Plaintiffs”), will and hereby do move for an Order, consistent with the terms of the Class Action Settlement Agreement in this case, awarding Class Counsel’s attorneys’ fees, reimbursing Class Counsel’s expenses, and awarding a Service Award of \$2,500.00 to each of the Class Representatives (\$7,500.00 total) .

Plaintiffs’ Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Joint Declaration of Melissa Emert, Nicholas Migliaccio, and William Federman, the Declarations of Gary S. Graifman, William B. Federman, Nicholas A. Migliaccio, David A. Goodwin, Scott D. Hirsch and Robert Green, the Declarations of Class Representatives Raymel Washington and Amanda Gordon, the Declaration of Mary T. Frantz, the Class Action Settlement Agreement and Release (the “Settlement”) previously filed with the Court (ECF 76-2), and all papers filed in support thereof, the argument of counsel at the hearing of this Motion, all papers and records on file in this matter, and such other matters as the Court may consider.

Dated: August 15, 2024

/s/ Nicholas A. Migliaccio

Nicholas A. Migliaccio (admitted *pro hac vice*)

Jason S. Rathod (admitted *pro hac vice*)

MIGLIACCIO & RATHOD LLP

412 H St NE, Suite 302

Washington DC 20002

Telephone (202) 470-3520

nmigliaccio@classlawdc.com

jrathod@classlawdc.com

Melissa R. Emert (admitted *pro hac vice*)
Gary S. Graifman (admitted *pro hac vice*)
**KANTROWITZ, GOLDHAMER
& GRAIFMAN, P.C.**
135 Chestnut Ridge Road, Suite 200
Montvale, NJ 07645
Tel: (845) 356-2570

William B. Federman (admitted *pro hac vice*)
FEDERMAN & SHERWOOD
10205 N. Pennsylvania Ave.
Oklahoma City, OK 73120
Ph: 405-235-1560

Daniel E. Gustafson (admitted *pro hac vice*)
David A. Goodwin (admitted *pro hac vice*)
GUSTAFSON GLUEK PLLC
Canadian Pacific Plaza
120 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Tel: (612) 333-8844
dgustafson@gustafsongluek.com
dgoodwin@gustafsongluek.com

Scott. D Hirsch (admitted *pro hac vice*)
SCOTT HIRSCH LAW GROUP
6810 N. State Road 7
Coconut Creek, FL 33073
(561) 569-7062
scott@scotthirschlawgroup.com

Proposed Class Counsel

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I. INTRODUCTION

The Court preliminarily approved the proposed Settlement of this action, and the Settlement Administrator has disseminated notice to Class Members in accordance with the Notice Plan.¹ Now, Plaintiffs respectfully request an award of attorneys' fees of Five Million Dollars (\$5,000,000.00) and, \$76,696.58 in necessary litigation expenses, and a service award of \$2,500.00 to each of the Class Representatives (\$7,500.00 in total) in accordance with the terms of the preliminarily approved Settlement between Plaintiffs and Defendants Block, Inc. and Cash App Investing, LLC. ("Cash App").

After nearly two years of hard-fought litigation, including three (3) full-day mediation sessions over the span of several months with additional telephone calls and exchanges of data with mediator Robert A. Meyer, Esq. of JAMS, the parties reached an exceptional Settlement that compensates Class Members for their losses and protects them against future risks. Based on the claims processed to date, the Settlement is valued at more than \$20 million. As explained in greater detail below, this includes the \$15 million non-reversionary Settlement Fund, and the \$5 million value of Defendants' changes in security practices resulting from this litigation.² The requested attorney's fees (\$5 million) amount to 25% of the value of the current settlement value, thus conforming to the benchmark established in the Ninth Circuit.

The requested fees are fair and reasonable considering Class Counsel's lodestar.³ Over nearly two (2) years of contested litigation, Plaintiffs' counsel devoted more than 2,644.30 hours and incurred a conservatively calculated, collective lodestar of \$1,874,297.30 and expenses of \$76,696.58 to secure the relief for the class. The time spent by Plaintiffs' Counsel in this litigation included investigating the initial claim for the data breach claims; investigating the claims based

¹ Unless otherwise noted, capitalized terms have the meaning ascribed to them in the Settlement Agreement. (ECF No. 76-2).

² For a full explanation of the Settlement's value, see *infra*, Section III.C.1.i

³ For ease of reference, the term "Class Counsel" as used herein includes the three co-lead firms, Kantrowitz, Goldhamer & Graifman, P.C., Migliaccio & Rathod LLP and Federman & Sherwood, together with the other class counsel involved in the case, being the firms of Gustafson & Gluek PLLC, Scott Hirsch Law Group and Liaison Counsel, Green & Noblin, P.C.

1 on operational security issues with the Cash App application and platform; interviewing and
2 vetting the various Plaintiffs; speaking with a multitude of potential class members who had a
3 breach or hacking event in their account; preparing the initial complaints and Consolidated
4 Complaint; obtaining discovery pursuant to Fed. R. Evid., Rule 408; engaging in multiple
5 mediation sessions with an experienced class action mediator, Robert A. Meyer; consolidating
6 the filed cases before the Court and seeking the appointment of Class Counsel; researching,
7 drafting, and amending the consolidated complaint on two different occasions to survive
8 Defendants' challenges to the complaints; meeting with and conferring with the Multi-State
9 Attorney General Task Force; compiling and supplying information requested by the Attorney
10 General Task Force; preparing a request for Proposal for multiple claims administration firms;
11 interviewing and retaining a cyber security expert; vetting and obtaining multiple rounds of bids
12 from the various claims administration firms; working with the selected firm to prepare the Notice
13 program and claims documents; preparing, finalizing and filing the Preliminary Approval
14 documents and negotiating an extremely favorable Settlement for the Class.

15 Further, the Class Settlement Notices are just being disseminated. Class Counsel and their
16 staffs are expected to devote additional time, estimated at more than approximately 1000 hours,
17 as they work to secure final approval of the Settlement, litigate any appeals, assist the numerous
18 Class Members with navigating through the claims process, address any objections and finalize
19 the settlement through final approval. The 1,000 hours of future time estimate is equally divided
20 between attorney and paralegal time with a blended rate of \$575.00 per hour, totaling an additional
21 lodestar amount of \$575,000.00. If that \$575,000 is considered (as it should be, especially as at
22 Final Approval much of it will have been incurred), that results in a combined lodestar on the part
23 of Class Counsel of \$2,449,297.30. *See* Joint Declaration of Class Counsel in Support of Motion
24 for Award of Attorneys' Fees, Reimbursement of Expenses and Service Award filed concurrently
25 herewith ("Jt. Decl.") at ¶69.

26 The requested fee award represents a lodestar multiple of 2.7, which is fair and reasonable
27 considering the significant risks Class Counsel faced, the complexity of the issues presented, and
28

1 the results and benefits achieved. If the future time to be incurred is included in the calculus, the
2 requested fee award represents a multiple of approximately 2.0.

3 Plaintiffs similarly request the Court award costs in the amount of \$76,696.58, which
4 reflect the reasonable costs necessary to pursue this litigation and secure the Settlement. The
5 relevant factors support the requested award.

6 Class Counsel also respectfully request the Court to award Service Awards of \$2,500 to
7 each of the three (3) Class Representatives for a total of \$7,500. As explained in their declarations
8 submitted in support of this Motion, each Class Representative did everything in their power to
9 represent the best interests of the Class and devoted a significant amount of time communicating
10 with attorneys, gathering evidence, reviewing and approving the complaints, responding to
11 informal discovery, and ultimately reviewing, approving, and executing the Settlement
12 Agreement. No Settlement would have been possible without their vital role.

13 **II. BACKGROUND**

14 **A. The Data Breach and the Procedural History of this Action**

15 Plaintiffs' operative Consolidated Complaint ("CC"), ECF. No. 73, alleges that
16 Defendants failed to take reasonable steps to safeguard customer information in connection with
17 two data breaches, the first occurring in December 2021 and the second occurring in 2023. The
18 breaches resulted in the unauthorized public release of the PII of Cash App Investing customers,
19 including Plaintiffs' and the Settlement Class Members' full names and Cash App brokerage
20 account numbers. The CC also alleged that there were significant security vulnerabilities affecting
21 the Cash App mobile application itself. Plaintiffs alleged that because of Defendants' negligence,
22 Plaintiffs and Class Members' PII has been compromised and their financial accounts, as well as
23 accounts unrelated to Cash App, are not secure, and were subject to unauthorized transactions.
24 As a result, Plaintiffs further alleged that potential Class Members' accounts were accessed
25 without authorization and/or used by unauthorized actors, Class Members had money taken from
26 their accounts, stolen funds were not refunded or were only partially refunded, and data associated
27
28

1 with Cash App accounts was used in various unauthorized ways. Plaintiffs further alleged that
2 Defendants failed to respond appropriately to reports of these issues.

3 On August 23, 2022, Plaintiffs Salinas and Washington filed a Class Action Complaint
4 asserting claims against both Block and CAI “for their failure to exercise reasonable care . . . in
5 connection with [the Data Breach].” Case No. 22-cv-04823, ECF No. 1, ¶ 1. Plaintiffs Salinas and
6 Washington allege that their Private Information was compromised in the Data Breach, *id.* at ¶ 5,
7 that Defendants failed to implement reasonable measures to safeguard their Private Information,
8 *id.* ¶¶ 32, 48, that Defendants made misrepresentations regarding the steps they took to protect
9 their Private Information, *id.* ¶¶ 33–35, and that Plaintiffs and the Class have been injured as a
10 result. *See e.g. id.* ¶¶ 12–13, 16–17. Plaintiffs Salinas and Washington asserted eleven (11)
11 separate claims and sought to represent a nationwide class of individuals “whose Private
12 Information was compromised because of the Data Breach,” as well as Illinois, California, and
13 Texas subclasses. *Id.* ¶ 94.

14 Specifically, Plaintiffs alleged negligence; violations of California Consumers’ Legal
15 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (the “CLRA”); fraud by omission; deceit by
16 concealment, Cal. Civ. Code §§ 1709 and 1710(3); negligent misrepresentation, Cal. Civ. Code
17 §§ 1709 and 1710(2); breach of implied contract; breach of confidence; invasion of privacy;
18 breach of fiduciary duty; and breach of the implied covenant of good faith and fair dealing. *See*
19 Consolidated Complaint, ECF No. 73.

20 On November 2, 2022, Plaintiff Gordon filed a separate class action complaint concerning
21 the same Data Breach noted above but also alleged claims against both Block and CAI based on
22 the security vulnerabilities affecting the Cash App mobile application itself. Case No. 22-cv-
23 06787, ECF No. 1, ¶ 4. Plaintiffs Gordon alleged that her Private Information was compromised
24 as a result. *Id.* ¶¶ 14, 16, 18. Like Plaintiffs Salinas and Washington, Plaintiff Gordon asserted that
25 Defendants failed to implement reasonable measures to safeguard her Private Information, *id.* ¶¶
26 4, 40–54, that Defendants made misrepresentations regarding the steps they took to protect her
27 Private Information, *id.* ¶¶ 8, 27–28, 124–26, and that she had been damaged as a result, *id.* ¶¶

1 14–15, 65. She sought to represent a nationwide class of “current or former customers . . . who
2 have had their [Private Information] compromised as a result of Defendants’ negligent security .
3 . . .,” as well as a Texas subclass. *Id.* ¶ 70.

4 Plaintiff Gordon’s opposition to consolidation, filed in December 2022, was withdrawn
5 following extensive conversations and exchanges of information between the Parties. These
6 discussions led to a determination that the Salinas Action and the Gordon Action stem from
7 Defendants’ pattern and practice of failing to adequately safeguard customer information and
8 funds. As a result, Plaintiffs Gordon, Salinas, and Washington, through their counsel, filed for
9 consolidation on December 21, 2023 and appointment of interim lead class counsel. The operative
10 Consolidated Complaint was filed on February 9, 2024.

11 Plaintiffs’ Counsel and Defendants’ Counsel conducted a thorough examination and
12 investigation of the facts and law relating to the matters in the Litigation.

13 **B. Settlement Negotiations and Mediation**

14 The Parties engaged in extensive, arms-length negotiations over the course of many
15 months, including three full-day mediation sessions in 2023 on April 4, October 18, and
16 November 15 with Robert A. Meyer, Esq. of JAMS. (*See* Jt. Decl. ¶ 27).

17 During the mediation, Plaintiffs’ counsel compiled for defense counsel a compendium of
18 scores of individual communications from Cash App customers relating to breaches, unauthorized
19 withdrawals or unauthorized transactions they claimed occurred.

20 Prior to each mediation session, the parties prepared comprehensive mediation briefs,
21 exchanged information and legal arguments, and commenced mediation with Mr. Meyers fully
22 prepared for each of the mediation days. Although progress was made at the initial mediation
23 sessions, the case did not settle at the initial mediation, and the parties continued negotiations
24 directly and through the mediator while continuing to present arguments to each other. (*Id.*) The
25 parties reported the status of their negotiations to the Court on multiple occasions, and the Court
26 granted their request to stay the case, including the then-pending motion to dismiss to allow those
27 negotiations to continue. (Dkt. 63, 65, 67).

1 Eventually the Parties reached agreement on the salient terms of the Settlement and
2 executed a term sheet which led to further negotiations which resulted in execution of a Settlement
3 Agreement dated on or about February 17, 2024.

4 During these negotiations, the parties collaborated on the logistics and substance of the
5 notice plan. (Jt. Decl. ¶ 31.) Class Counsel spent numerous hours negotiating multiple rounds of
6 bids from well-established, experienced, and highly regarded class action administration firms.
7 (*Id.* ¶ 31.) As a result, Plaintiffs maximized the amount that would be available for payment of
8 claims, by minimizing notice and administration costs, while ensuring that the notice and
9 administration plan complied with all rules, guidelines, and due process requirements. (*Id.* ¶ 31.)

10 **C. Preliminary Approval**

11 On March 3, 2024, Class Counsel moved for preliminary approval of the Settlement. (Dkt.
12 76.) The motion included the various categories of information required to be furnished pursuant
13 to the Northern District of California Guidance for Class Action Settlements. The Court granted
14 that motion on June 6, 2024 (Dkt. 96).

15 On April 30, 2024, the Court set the hearing for Preliminary Approval for May 6, 2024
16 and asked counsel to address a series of questions posed by the Court in the Order (Dkt. 92). On
17 May 6, 2024, the Court convened the hearing on Preliminary Approval at which counsel for the
18 Parties addressed the Court's questions. On June 3, 2024, after receiving the information
19 requested, the Court preliminarily approved the settlement and issued the schedule for notice, and
20 for the final approval papers (Dkt. 96).

21 For the reasons addressed below, the value of the Settlement exceeds \$20 million; there
22 was no collusion between Plaintiffs and Defendants; and the lodestar cross-check supports
23 granting the requested attorneys' fees and costs in full. Jt. Decl. ¶¶ 38, 57-59, 68-70. In addition,
24 Plaintiffs adequately explain below and in the Class Representative declarations why the incentive
25 payments for the Class Representatives are justified and appropriate, and how each of the named
26 Plaintiffs participated in the litigation of this action.

27 **D. Settlement Administration**

28

1 The Parties selected Angeion Group as the Claims Administrator following a highly
 2 competitive bidding process to identify the most efficient settlement administration option for the
 3 benefit of the Class Members. Jt. Decl. ¶ 45.

4 **III. ARGUMENT**

5 **A. The Court Should Approve the Application for Award of Attorneys' Fees**

6 District courts may award attorneys' fees and costs to a prevailing plaintiff where "the
 7 successful litigants have created a common fund for recovery or extended substantial benefit to
 8 the class.'" *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F. 935, 941 (9th Cir. 2011) (quoting
 9 *Alyeska Pipeline Serv. Co. v. Wilderness Soc.*, 421 U.S. 240, 275 (1975)). Where counsel for a
 10 class seeks fees from a common fund, courts within the Ninth Circuit have discretion to employ
 11 either the percentage-of-fund or the lodestar-multiplier method to determine whether the fee
 12 request is reasonable. *See Smith v. Pac. Pers. Servs.*, No. 17-cv-03594-SK, 2018 U.S. Dist. LEXIS
 13 246972, at *22 (N.D. Cal. Oct. 11, 2018) (Kim, M.J.) (referencing *In re Mercury Interactive*
 14 *Corp.*, 618 F.3d 988, 992 (9th Cir. 2010). "Because the benefit to the class is easily quantified
 15 in common-fund settlements, we have allowed courts to award attorneys a percentage of
 16 the common fund in lieu of the often more time-consuming task of calculating the lodestar." *Id.*
 17 (quoting *Bluetooth*, 654 F.3d at 942). Regardless of the chosen method, courts must award
 18 attorneys' fees based on an evaluation of "all of the circumstances of the case." *Vizcaino v.*
 19 *Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002).

20 Whether applying the lodestar or percentage method, "the most critical factor is the degree
 21 of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *see also Bluetooth*, 654
 22 F.3d at 942 ("Foremost among these considerations . . . is the benefit obtained for the class.");
 23 Federal Judicial Center, *Manual for Complex Litigation*, § 27.71, 336 (4th ed. 2004) ("[The]
 24 fundamental focus is on the result actually achieved for class members.").

25 **B. The Court Should Use the Percentage Method to Calculate Reasonable** 26 **Attorneys' Fees**

27 Under the "percentage-of-the-fund" method, the "court simply awards the attorneys
 28 a percentage of the fund sufficient to provide class counsel with a reasonable fee." *Hanlon*

1 *v. Chrysler Group*, 150 F.3d 1011, 1029 (9th Cir. 1998). Most courts have found the percentage
 2 approach superior in cases with a common-fund recovery because it (i) parallels the use of
 3 percentage-based contingency fee contracts; (ii) aligns the lawyers’ interests with that of the class
 4 in achieving the maximum possible recovery; and (iii) reduces the burden on the court by
 5 eliminating the detailed and time-consuming lodestar analysis. *See In re HP Inkjet Printer Litig.*,
 6 716 F.3d 1173, 1178 (9th Cir. 2013) (“[C]ourts try to . . . [tie] together the interests of class
 7 members and class counsel” by “tether[ing] the value of an attorneys’ fees award to the value of
 8 the class recovery . . . [t]he more valuable the class recovery, the greater the fees award . . . [a]nd
 9 vice versa.”); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1374–77 (N.D. Cal. 1989); *Vinh*
 10 *Nguyen v. Radient Pharm. Corp.*, No. 11-cv-00406, 2014 WL 1802293, at *9 (C.D. Cal. May 6,
 11 2014) (“There are significant benefits to the percentage approach, including consistency with
 12 contingency fee calculations in the private market, aligning the lawyers’ interests with achieving
 13 the highest award for the class members, and reducing the burden on the courts that a complex
 14 lodestar calculation requires.”).

15 The district court may award plaintiffs’ attorneys a percentage of the common fund, so long
 16 as that percentage represents a reasonable fee. *See e.g., Wash. Pub. Power Supply Sys.*, 19 F.3d at
 17 1294 n.2. Although the Ninth Circuit has set 25% of a common fund as a “benchmark” award under
 18 the percentage-of-the-fund method, courts award more than the benchmark when justified,
 19 considering factors much like those considered when determining whether a multiplier is
 20 appropriate under the lodestar approach. *Vizcaino*, 290 F.3d at 1048, 1051. “It is not unusual . . . for
 21 courts to award attorney’s fees above this benchmark rate.”
 22 *Ayala v. AT&T Mobility Servs., LLC*, No. 2:18-cv-08809-FLA (MRWx), 2024 U.S. Dist. LEXIS
 23 48470, at *11 (C.D. Cal. Mar. 18, 2024) (collecting authority); *In re Omnivision Techs., Inc.*, 559
 24 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) (“[I]n most common fund cases, the award exceeds that
 25 benchmark.”).

26 The Settlement here is valued at \$20 million. As such, the requested fee award of \$5 million
 27 presently represents approximately 25% of the current Settlement Value. *See supra*, Section III.A.
 28

Accordingly, the requested fee here will be well within the guidelines of the Ninth Circuit’s 25% “benchmark” for such awards. *Vizcaino*, 290 F.3d at 1047.

As explained below, the extraordinary result presented by the Settlement, the contingent nature of representation, the risks of nonpayment, the highly complex nature of the litigation and the high caliber of lawyering required and employed by all counsel weigh in favor of a much higher percentage of the fund than that sought by Class Counsel here.

C. The Relevant Factors Support Class Counsel’s Requested Fee Award

Class Counsel’s request for an award of 25% of the common fund “is within the ‘usual range’” of fee awards that the Ninth Circuit award in common fund cases, and reasonable under the factors that courts in this Circuit apply to evaluate a fee award. *Munoz v. Big Bus Tours Ltd.*, No. 18-05761, 2020 WL 13533045, at *4 (N.D. Cal. Feb. 12, 2020) (citing *Vizcaino*, 290 F.3d at 1047); *See also, In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d. at 1047.

1. Class Counsel Achieved an Exceptional Result for the Class

“The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award.” *Omnivision*, 559 F. Supp. 2d at 1046; *see also* Federal Judicial Center, Manual for Complex Litigation, § 27.71, p. 336 (4th ed. 2004) (the “fundamental focus is the result actually achieved for class members”). “[W]hen determining the value of a settlement, courts consider the monetary and non-monetary benefits that the settlement confers.” *Miller v. Ghirardelli Chocolate Co.*, No. 12-cv-04936, 2015 WL 758094, at *5 (N.D. Cal. Feb. 20, 2015); *see also Vizcaino*, 290 F.3d at 1049 (affirming enhanced fee award where “the court found that counsel’s performance generated benefits beyond the cash settlement fund”); *Linney v. Cellular Alaska P’ship*, No. C-96-3008 DLJ, 1997 WL 450064, at *7 (N.D. Cal. July 18, 1997) *aff’d*, 151 F.3d 1234 (9th Cir. 1998) (granting fee award of 1/3 of common fund where settlement provided additional non-monetary relief).

i. The Settlement Value Is Currently Valued at \$20 Million and Is Likely to Exceed This Amount

Class Counsel’s efforts generated an exceptional Settlement valued at \$20 million, which includes a \$15 million non-reversionary Settlement Fund, and important business practice changes

by Cash App as a result of this litigation to address and alleviate the alleged security deficits on its mobile application and platform, which are conservatively valued at Five Million Dollars (\$5,000,000.00). Frantz Decl. ¶¶ 23-29. As further described in Plaintiffs' Motion for Preliminary Approval (Dkt. 76), the \$15 million non-reversionary Settlement Fund will be used by the Settlement Administrator to pay (a) Notice and Administrative Expenses; (b) Approved Settlement Class Members' Claims; (c) any attorneys' Fee Award and Costs approved by the Court; and (e) Service Award Payments approved by the Court. Jt. Decl. ¶ 41.

**ii. The Value of Cash App's Business Practice
and Security Adjustments is \$5 Million**

In addition to the Settlement Fund, Plaintiffs demanded and Cash App agreed to implement valuable business practice changes which will harden Cash App's existing cyber security. This relief is crucial because Plaintiffs' and Class members' PII remain in Cash App's possession.

As described above, and as further described in the attached declaration of Plaintiffs' cybersecurity expert, Mary Frantz, these business practice changes include:

- 1) Vulnerability Management: Defendants will maintain a program to recognize, understand, and mitigate security risks. II.F.1.
- 2) Infrastructure/Application Testing: Defendants will maintain a multifaceted security program including:
 - a. Training to prevent common coding vulnerabilities;
 - b. A Security team dedicated to Cash App's software and infrastructure;
 - c. Internal vulnerability scans;
 - d. An outside vendor to scan for vulnerabilities;
 - e. Annual third-party penetration testing;
 - f. A public bug bounty program. II.F.2.
- 3) Threat Intelligence: Defendants will maintain a threat intelligence team. II.F.3.
- 4) Third Party Attestation: Defendants will annually have conducted:

- a. Independent third-party SOC Type II examination, regarding design and operating effectiveness of controls relevant to the Security, Availability, Processing Integrity, and Confidentiality trust service criteria;
- b. Independent PCI DSS assessment covering data security requirements for protecting cardholder data processed, stored, or transmitted. II.F.4.

Many of these remedial changes were suggested by Plaintiffs cybersecurity expert, Mary Frantz, in consultation with Class Counsel, after reviewing relevant documents and information concerning security of the Cash App application. During the litigation, Plaintiffs' expert requested information from Cash App which was supplied by Defendants. Thus, Ms. Frantz had a sufficient understanding of the state of Cash App's data security practices, procedures, and shortcomings at the time the above business practice changes were developed. Ms. Frantz concluded that "the business practice changes included in the proposed Settlement Agreement address the industry standard technical and administrative deficiencies that contributed to the Cash App's data breach and if implemented would reduce the risk to consumers of Cash App's payment services platform." *See* Frantz Decl. at ¶ 4. Ms. Frantz's valuation of the security measures is well in excess of \$5 million. *Id.* at ¶¶ 23-29.

iii. The Value Ascribed to Cash App's Remedial Measures Is Conservative

"Incidental or non-monetary benefits conferred by the litigation are relevant circumstances" in determining an appropriate award of attorneys' fees, under both the lodestar and percentage methods. *Vizcaino*, 290 F.3d at 1049 (concluding that change in employer practices and clarification of law were factors supporting fee award) (citing with approval *Bebchick v. Wash. Metro. Area Transit Comm'n*, 805 F.2d 396, 408 (D.C. Cir. 1986) ("[A]n upward adjustment to the lodestar is appropriate to reflect the benefits to the public flowing from this litigation.")); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) ("[C]ourts should consider the value of the injunctive relief obtained as a 'relevant circumstance' in determining what percentage of the common fund class counsel should receive as attorneys' fees."); *In re Solara Medical Supplies Data Breach Litig.*, No. 3:19-cv-02284, ECF No. 150 (S.D. Cal., Sept. 12, 2022) (granting the plaintiffs' motion for attorney's fees in a data breach class action where the requested

1 attorney's fees were based in part on the value the remedial measures added to the settlement).

2 In addition, because the remedial measures bolster Cash App's global security—not just
3 the attack vector used for the Data Breach—these remedial measures provide an enormous benefit
4 to *all* Class Members (and any individuals for whom Cash App stores PII), regardless of whether
5 they submit a claim for other benefits. *Id.*; *see also Troy v. Aegis Senior Cmty. LLC*, No. 16-cv-
6 03991-JSW, 2021 U.S. Dist. LEXIS 248899, at *11-12 (N.D. Cal. Aug. 23, 2021) (the avoided
7 economic harm which equals the benefits received as compensatory relief could serve as the basis to
8 value the future benefits of the injunctive relief). Here, the Class will receive approximately \$15 million
9 in relief for injuries incurred in the past. The security measures now introduced will avoid that harm
10 prospectively and thereby save Class Members conservatively an equal amount in the future because
11 of the elimination of the security vulnerabilities that caused that past harm.

12 Because “the value to individual class members of benefits deriving from injunctive
13 relief can be accurately ascertained,” the amount of such relief may be included “as part of
14 the value of a common fund for purposes of applying the percentage method of determining
15 fees.” *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *8
16 (N.D. Cal. Aug. 17, 2018) (quoting *Staton*, 327 F.3d at 974); *see also In re Checking Account*
17 *Overdraft Litig.*, No. 1:09- MD-02036-JLK, 2013 WL 11319243, at *13 (S.D. Fl. Aug. 2, 2013)
18 (adding value of non-assessed overdraft fees to common fund before applying percentage method);
19 *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 478 (D.N.J. 2008) (including value of injunctive
20 relief that benefits the class in percentage-of-recovery calculation). At a minimum, the Court should
21 “consider the value of this nonmonetary relief as ‘a “relevant circumstance” in determining what
22 percentage of the common fund class counsel should receive as attorneys' fees, rather than as part
23 of the fund itself.” *Anthem*, 2018 WL 3960068, at *8.

24 **2. Class Counsel Undertook Substantial Risk in this Litigation**

25 Risk is a critical factor in determining a fair fee award. *In re Omnivision Techs., Inc.*, 559 F.
26 Supp. 2d at 1046-1047 (“The risk that further litigation might result in Plaintiffs not recovering at
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1 all, particularly a case involving complicated legal issues, is a significant factor in the award of
2 fees”) (citing *Vizcaino*, 290 F.3d at 1048).

3 Defendants have steadfastly denied Plaintiffs’ allegations of wrongdoing, and but for the
4 settlement, would have vigorously defended against Plaintiffs’ claims with a motion to compel
5 arbitration, dispositive motions, and vehement opposition to class certification.

6 All of these considerations, and others, made continued litigation risky. Indeed, data breach
7 cases are, by nature, especially risky and expensive. This case is no exception to that rule. It involves
8 millions of Settlement Class Members, complicated and technical facts, a well-funded defendant,
9 and numerous contested issues on arbitration, class certification and substantive defenses. There are
10 numerous substantial hurdles that Plaintiffs would have had to overcome before the Court might
11 find a trial appropriate.

12 Given the early stage of the litigation, the legal sufficiency of Plaintiffs’ pleading was not
13 tested by a motion to dismiss. Data breach cases, particularly, face substantial hurdles in surviving
14 even past the pleading stage and are among the most risky and uncertain of all class action litigation.
15 *See, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060, 2010 WL 2643307, at *1
16 (S.D.N.Y. June 25, 2010) (collecting cases). Were litigation to proceed, there would be numerous
17 expert reports and costly depositions, which would present significant expenses. As in any data
18 breach class action, establishing causation and damages on a class-wide basis is largely uncharted
19 territory and full of uncertainty.

20 **3. The Settlement Required Skill and High-Quality Work**

21 The “prosecution and management of a complex national class action requires unique legal
22 skills and abilities” that are to be considered when determining a reasonable fee. *In re Omnivision*
23 *Techs., Inc.*, 559 F. Supp. 2d at 1047 (citation omitted); *see also Vizcaino*, 290 F.3d at 1048
24 (reasoning that the complexity of the issues involved and skill and effort displayed by class
25 counsel are among the relevant factors for determining the proper fee under the percentage
26 approach). The relative speed with which counsel achieves a good result also illustrates the quality
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28

1 of their work. “A surgeon who skillfully performs an appendectomy in seven minutes is entitled
 2 to no smaller fee than one who takes an hour; many a patient would think he is entitled to more.”
 3 *Purdy v. Sec. Sav. & Loan Asso.*, 727 F. Supp. 1266, 1278-79 (E.D. Wis. 1989) (internal quotation
 4 and citation omitted) (commending counsel for settling the case within 15 months and awarding
 5 a 2.0 multiplier on lodestar). Indeed, “a prompt and efficient attorney who achieves a fair
 6 settlement without litigation serves both his client and the interests of justice.” *Rates Tech., Inc.*
 7 *v. Speakeasy, Inc.*, 685 F.3d 163, 172 (2d Cir. 2012) (internal citations and quotations omitted).

9 Class Counsel are experienced litigators who have successfully prosecuted and resolved
 10 numerous large consumer class actions and other complex matters, including other data breach
 11 cases. *See* Firm Resumes of the respective Class Counsel at Exhibits 1 through 6 of the Joint Decl.
 12 Class Counsel’s skill and relevant experience were critical to achieving the Settlement here. As
 13 discussed herein and in counsels’ supporting declarations, investigating, prosecuting, and settling
 14 this matter required considerable commitment of time and resources by Class Counsel.

16 Courts also consider “the quality of opposing counsel as a measure of the skill required to
 17 litigate the case successfully.” *In re American Apparel, Inc. S’holder Litig.*, No. 10-cv-06352 MMM
 18 (JCGx), 2014 WL 10212865, at *22 (C.D. Cal. 2014). Here, the caliber of opposing counsel
 19 supports the requested award, given that Plaintiffs were adverse to one of the best law firms in the
 20 country with virtually unlimited resources at their disposal. *See Vizcaino v. Microsoft Corp.*, 142 F.
 21 Supp. 2d 1299, 1303 (W.D. Wash. 2001); *see also Wing v. Asarco*, 114 F.3d 986, 989 (9th Cir.
 22 1997) (noting the district court’s evaluation of class counsel’s “first-rate job”).

24 **4. Class Counsel Worked on a Fully Contingent Basis**

25 The Ninth Circuit has confirmed that a fair fee award must include consideration of the
 26 contingent nature of the fee. *See, e.g., Vizcaino*, 290 F.3d at 1050. Courts long have recognized that
 27 the public interest is served by rewarding attorneys who assume representation on a contingent basis
 28

1 with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their
 2 work. *See, e.g., In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994)
 3 (“Contingent fees that may far exceed the market value of the services if rendered on a non-
 4 contingent basis are accepted in the legal profession as a legitimate way of assuring competent
 5 representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they
 6 win or lose.”); *Vizcaino*, 290 F.3d at 1051 (observing courts reward successful class counsel in
 7 contingency cases “by paying them a premium over their normal hourly rates”). This factor deserves
 8 particular weight under the unique circumstances of this matter.

9 If Class Counsel had been able to negotiate a fee directly with Class Members, a 25%
 10 contingent fee would have been eminently reasonable, if not low, for a case this complex, risky, and
 11 difficult. Given the prospective risks and difficulties, it would have been reasonable for Class
 12 Members to retain counsel at no cost to them unless counsel succeeded, in which case counsel would
 13 be entitled to 25% of the total of any fund recovered (after counsel’s expenses). This is especially
 14 true given the willingness of Class Counsel’s law firms to advance more than 2600 hours of time
 15 and \$76,696.58 in costs, with no promise of recovering those funds unless the case was successful.

16 Class Counsel prosecuted this matter on a purely contingent basis, agreeing to advance all
 17 necessary expenses and that they would only receive a fee if there was a recovery. *Jt. Decl.* ¶ 15.
 18 To date, Class Counsel has received no compensation at all litigating this case on behalf of the Class.
 19 Class Counsel’s “substantial outlay,” and the risk that none of it would be recovered, further
 20 supports the award of their requested fees. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1047.

21 **5. The Requested Fee Award Is Not the Product of Collusion**

22 First, the mediation and settlement negotiations here, as well as the ultimate product of those
 23 interactions between Plaintiffs’ and Defendants’ counsel were facilitated and overseen by an
 24 experienced neutral mediator: Robert A. Meyer, Esq. of JAMS. *Jt. Decl.* ¶ 27. This supports the
 25 finding that the negotiations were fair and without collusion or fraud. *Swain v/ Anders Group, LLC*,
 26 2022 WL 5250139 at *10 (E.D. Cal. Oct. 6, 2022); *G.F. v. Contra Costa Cnty.*, No. 3:13-cv-03667,
 27 2015 WL 4606078, *13 (N.D. Cal. July 30, 2015) (“[t]he assistance of an experienced mediator in
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the settlement process confirms that the settlement is non-collusive”) (quoting *Satchell v. Fed. Exp. Corp.*, No. 3:03-cv-02659, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007)); *In re Bluetooth*, 654 F.3d at 948 (finding that engaging in formal mediation with an experienced mediator weighs “in favor of a finding of non-collusiveness”).

Second, the Settlement is non-reversionary—a factor that weighs against any indicia of collusion. Cases in the Ninth Circuit that have identified “subtle signs” of collusion include those where the defendant is set to recover some of the settlement fund through a reversionary agreement. *See, e.g., McKinney-Drobnis v. Oreshack*, 16 F.4th 594, 610 (9th Cir. 2021) (“[W]e have identified ‘reverter’ or ‘kicker’ provisions as red flags.”); *Maree v. Deutsche Lufthansa AG*, No. 8:20-cv-00885, 2022 WL 5052582, *4 (C.D. Cal. Sep. 30, 2022) (denying claims-made settlement due to the “clandestine” nature of settlement negotiations conducted without any formal discovery). However, where the settlement is non-reversionary, but a clear-sailing agreement exists, courts have found that the clear-sailing agreement is not necessarily a strong indicator of collusion. *See Lim v. Transforce, Inc.*, No. LA CV19-04390 JAK, 2022 WL 17253907, *12 (C.D. Cal. Nov. 15, 2022) (granting preliminary approval and finding no collusion where non-reversionary settlement reached under supervision of mediator); *Lusk v. Five Guys Enters. LLC*, No. 1:17-cv-00762-AWI, 2022 WL 4791923, *9 (E.D. Cal. Sep. 30, 2022) (finding no collusion based on same).

6. The Requested Amount Is Comparable to Attorneys’ Fees Awarded in Other Cases

In determining whether an award is reasonable, courts may look to awards made in similar cases. *See Vizcaino*, 290 F.3d at 1050 n.4. Where the percentage-of-the fund method is employed, it is well established that 25% of a common fund is a presumptively reasonable amount of attorneys’ fees. *See, e.g., Bluetooth*, 654 F.3d at 942 (“[C]ourts typically calculate 25% of the fund as a ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any ‘special circumstances’ justifying a departure.”). However, “in most common fund cases, the award exceeds” the 25% benchmark. *Knight v. Red Door Salons, Inc.*, No. 08-cv- 1520 SC, 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009).

1 The request here is modest both in absolute and in percentage-of-fund terms, compared with
 2 awards in other data breach cases. For instance, the fee requested here compares favorably with that
 3 awarded in *Home Depot*, where relying primarily on the lodestar method, the court approved a fee
 4 award of \$7,536,497.80 after applying a 1.3 multiplier to counsel’s base lodestar of \$5,797,306,
 5 where the settlement featured a \$13 million settlement fund, and was valued at \$27 million total.
 6 *Home Depot*, 2016 WL 11299474, at *1-2 (N.D. Ga. Aug. 23, 2016) (granting fee motion); *see also*
 7 *id.* No. 1:14-md-02583, at Dkt. 226-1 (explaining settlement benefits in detail in motion for final
 8 approval).

9 The *Anthem* court applied the percentage-of-fund approach to award plaintiffs’ counsel in
 10 that data breach case 27% of the settlement fund, for a total of \$31.05 million. *Anthem*, 2018
 11 WL 3960068, at *16. Similarly, the *Target* court approved a fee award of \$6.75 million, which
 12 represented 29% of defendant’s total payout, which included a \$10 million settlement fund.
 13 *In re Target Corp. Customer Data Security Breach Litig.*, No. 14-md-02522, 2015 WL 7253765,
 14 at *3 (D. Min. Nov. 17, 2015) (affirmed on this point, *In re Target Corp. Customer Data Sec.*
 15 *Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018)).

16 Here, Class Counsel’s fee request presently represents 25% of the current conservatively
 17 estimated Settlement Value of \$20 million. Accordingly, the request compares favorably to other
 18 comparable cases.

19 **D. Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees**

20 Application of the lodestar method here confirms the propriety of Class Counsel’s fee
 21 request. Under the lodestar method, “the district court ‘multiplies a reasonable number of hours by
 22 a reasonable hourly rate.’” *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (quoting *Fischel*
 23 *v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir. 2002)). The lodestar amount may
 24 then be adjusted by a risk multiplier, and/or “a multiplier that reflects ‘a host of “reasonableness”
 25 factors.’” *Stetson*, 821 F.3d at 1166 (quoting *In re Bluetooth*, 654 F.3d at 941-42).

26 In performing the cross-check, however, “the determination of fees should not result in a
 27 second major litigation,” and “trial courts need not, and indeed should not, become green-eyeshade
 28

1 accountants. The essential goal...is to do rough justice, not to achieve auditing perfection.” *Jarrell*
 2 *v. Amergas Propane, Inc.*, No. 16-CV-01481-JST, 2018 WL 1640055, at *4 (N.D. Cal. Apr. 5,
 3 2018) (citations omitted).

4 **1. The Number of Hours Claimed Is Reasonable**

5 Plaintiffs’ Counsel maintained contemporaneous, detailed time records billed in 6-minute
 6 increments. The hours expended by each Plaintiffs’ Counsel firm included in the present request are
 7 detailed in the accompanying Joint Declaration, based on the individual firm declarations submitted
 8 herewith, and have been reviewed in detail by Class Counsel. Jt. Decl. ¶¶ 60-63. The total amount
 9 of hours and lodestar incurred to date are respectively 2,644.30 hours and \$1,874,297.30 in lodestar

10 In anticipation of the filing of the fee motion, Class Counsel collectively reviewed the time
 11 submissions, audited them, and reduced hours that appeared duplicative, excessive, or unnecessary.
 12 Joint Decl. ¶ 85. 1014, 1028-29 (9th Cir. 2000), *as amended on denial of reh’g* (Nov. 2, 2000)
 13 (counsel are entitled to recover for all hours reasonably expended); *Moore v. James H. Matthews &*
 14 *Co.*, 682 F.2d 830, 839 (9th Cir. 1982) (“every item of service which, at the time rendered, would
 15 have been undertaken by a reasonable and prudent lawyer to advance or protect his client’s
 16 interest”) (citation omitted).

17 As detailed above and in the attached declarations, these hours include: (1) engaging in
 18 extensive efforts to develop strategic plans, (2) extensive background investigation, (3) vetting
 19 potential class representatives, (4) self-organizing and consolidating the cases before this Court, (5)
 20 extensively researching and filing the consolidated complaint, (6) meeting and conferring with
 21 defense counsel and negotiating agreements regarding discovery, (7) undertaking substantial
 22 investigation of the Data Breach, the security vulnerabilities and the corporate structure of
 23 Defendants, (8) consulting with a highly regarded cybersecurity expert concerning the Data Breach
 24 and the security vulnerabilities of Cash App, (9) preparing extensive mediation briefing and
 25 preparing for and attending multiple private mediation sessions before Robert A. Meyers, Esq. of
 26 JAMS, (10) attending three days of mediations in 2023 on April 4, October 18, and November 15,
 27 (11) negotiating the details of the Settlement Agreement over multiple months and securing
 28

1 preliminary approval of the Settlement, (12) responding to inquiries from Class Members after Class
2 Notice was disseminated, (13) preparing the preliminary approval motion papers, addressing the
3 concerns raised by the Court and attending the May 6, 2024 hearing for Preliminary Approval, (14)
4 addressing inquiries raised by the multi-state Attorney General task force, (15) vetting multiple
5 Claims Administration and working with Angeion Group to prepare and implement the Notice Plan
6 and Claim Forms, and (16) monitoring and aiding Class Members in the claims process. Jt. Decl. ¶
7 67.

8 Moreover, additional work will be required. Class Counsel must still: (1) prepare for and
9 attend the final approval hearing, including the research and drafting of the reply papers and
10 responses to objections; (2) continue to respond to the many inquiries from Class Members; (3)
11 assist multiple Class Members in navigating through the Claims Process, including submission of
12 required documentation where needed; (4) oversee the Settlement through final approval of
13 distribution of the common fund; (5) oversee the claims administration process, including
14 addressing any claim review issues; and (6) handle any appeals. *Id.* As set forth above and in the
15 Joint Declaration, an estimate of 1,000 hours additional time results in a combined lodestar on the
16 part of Class Counsel of \$2,449,297.30. Jt. Decl. ¶ 69.

17 In addition, going forward, counsel will continue to advocate for Class Members, answer
18 their inquiries in connection with the filing of claims and submission of documents necessary to
19 qualify; address Class Members questions relating to deficiency letters they may receive with regard
20 to their claims in order to assist them in qualifying; advocate for Class Members whose claims
21 have been denied and who seek to have such claims reviewed in the internal review process; and
22 address issues of payment amounts which may be raised by Class Members who have approved
23 claims. Based on the substantial experience of Class Counsel in other class settlements involving
24 submission of documentation as part of the qualifying process, Class Counsel reasonably estimate
25 at least an additional 1,000 hours will be devoted to this action going forward by counsel and their
26 staffs. *See* Paragraphs 8-9, 18 of the Declaration of Gary S. Graifman in Support of Award of
27 Attorneys' Fees and Reimbursement of Expenses ("Graifman Decl.") submitted herewith as Exhibit
28

1 1 of the Joint Decl. In this case, 99 million (99,000,000) email notices will be sent. Counsel has
2 already received direct inquiries from approximately 1,000 Class Members. The email notices will
3 continue to roll out over the next several days.

4 Case law is clear - Future time incurred by counsel may be submitted and considered by the
5 Court in determining the attorneys' fee award. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029-
6 30 (9th Cir.1998) (recognizing that class counsel should be entitled to payment for future work
7 required of them). Indeed, it is not uncommon for class counsel to request and receive the award of
8 fees for the additional work required to enforce or ensure that class members obtain the benefits of
9 the settlement. *See also, Safier v. Western Digital Corp.*, 2006 WL 8459585, at *3 (N.D. Cal. July
10 6, 2006) (holding that a fee multiplier is supported "by class counsel's declaration that they have
11 responded to a number of inquiries from class members and will continue to expend time and effort
12 in implementing and monitoring the settlement," citing to *Hanlon, supra*); *Asghari v. Volkswagen*
13 *Grp. Of Am., Inc.*, 2015 WL 12732462, at *50 (C.D. Cal. May 29, 2015) (considering in the lodestar
14 calculus class counsel's future work in automotive defect class settlement and recognizing the
15 "future services that class counsel must provide through the life of the latch replacement program
16 because class counsel must remain available to enforce the contractual elements of the settlement
17 agreement and represent any class members who encounter difficulties") (internal quotations
18 omitted); *Kiser v. Huger*, 517 F.2d 1237, 1255-57 (D.C. Cir. 1974, *opinion reinstated in part on*
19 *rehearing sub nom., Pete v. United Mine Workers of Am. Welfare & Ret. Fund of 1950*, 517 F.2d
20 1275, 1256 (D.C. Cir. 1975) (noting that the District Court fee award of \$3,000 for future work
21 appeared to be too low an estimate because "despite the court-ordered efforts of the Fund and
22 Trustees to ensure that all class members are found and enrolled, class counsel had and has a
23 responsibility to oversee the process of finally determining the class membership."); *United Fed. of*
24 *Postal Clerks, AFL-CIO v. U.S.*, 61 F.R.D. 13, 20-21 (D.D.C. 1973) (seeking to devise manner of
25 fairly compensating class counsel for future work, which included "continuing instruction,
26 assistance and consultation with employees' preparation of their claims" and "continuous and
27
28

extensive correspondence with claimants concerning their legal problems regarding their claims" (see fn. 14 setting forth the future work to be engaged in.)

2. The Hourly Rates Are Reasonable

Plaintiffs' Counsel are entitled to the hourly rates charged by attorneys of comparable experience, reputation, and ability for similar complex federal litigation. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). Here, Plaintiffs' Counsel's hourly rates are reasonable considering their significant experience, expertise, and skill. Joint Decl. ¶ 73.

Class Counsel have brought to this case their extensive experience in data breach and consumer class actions. Joint Decl. ¶¶ 73; Exhs. 1-3, 2-3, 3-2, 4-3, 5-3, 6-3. The hourly rates of Plaintiffs' Counsel are in line with prevailing rates in this District for attorneys with comparable experience, and similar rates have been approved by other federal and state courts. Jt. Decl. ¶ 73; see, e.g., Dkt. 631, *Brown v. Google LLC*, No. 4:20-cv-03664 (N.D. Cal. July 15, 2022) (approving rates in privacy class action up to \$1,950 per hour; partner approved at \$1,000 to \$1,300.00 per hour, and associate rates approved at \$800 per hour); *Reyes v. Experian Info. Sols., Inc.*, No. 8:16-cv-00563, (C.D. Cal.) (approving rates of \$850 and \$750 per hour for partners).

3. A Positive Multiplier Is Justified

A court may reduce or enhance the lodestar figure based on "a host of 'reasonableness' factors, 'including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.'" *Bluetooth*, 654 F.3d at 942 (quoting *Hanlon*, 150 F.3d at 1029). "'The district court *must* apply a risk multiplier to the lodestar 'when (1) attorneys take a case with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence the case was risky.' Failure to apply a risk multiplier in cases that meet these criteria is an abuse of discretion." *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir., 2016).

Based on these factors, as further explained below, Class Counsel submit that the requested multiplier of 2.7 is modest and more than merited given the excellent results obtained on a

contingency basis in this complex case.⁴ *See, e.g., Vizcaino*, 290 F.3d at 1051 & Appendix (approving multiplier of 3.65 and citing cases with multipliers as high as 19.6); *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. 3:15-md-02672, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (“Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation.”) (quoting *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298-99 (N.D. Cal. 1995)); *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008) (upholding 25% of the fund award resulting in a multiplier of approximately 5.2, and citing cases in support); *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers can range from 2 to 4 or even higher.”) (*overruled on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018)); *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (“In recent years multipliers of between 3 and 4.5 have become common”) (citation omitted); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (holding “modest” multiplier of 4.65 “fair and reasonable”).

Further, the complexity of this case required experienced legal skills and high-quality work. The “prosecution and management of a complex national class action requires unique legal skills and abilities” that are to be considered when determining a reasonable fee. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1047 (citation omitted). This case presented extraordinary challenges that required extraordinary lawyering. In general, data breach class actions present relatively uncharted territory. Further, Class Counsel represented a class consisting of approximately 85 million consumers across the nation, requiring research and potential application of the laws of each respective state. The circumstances of the breach also presented significant technical challenges and risk, requiring Class Counsel to understand the complicated security systems at issue.

Class Counsel have extensive experience litigating and serving as counsel in numerous consumer class actions, including in other data breach cases. *See* the firm resumes, Exhibit 3

⁴ If the additional time Class Counsel estimates will be required to be expended in the future, in the amount of approximately 1,000 hours is considered, the multiplier is only 2.0. *See* Para. 19 of Declaration of Gary S. Grafman in Support of Application for Award of Attorneys’ Fees and Reimbursement of Expenses, annexed as Exhibit 1 to Joint Decl.

1 annexed to each Declaration submitted by the individual law firms herein. Class Counsel devoted
2 considerable time and effort prosecuting this case and securing the significant relief for the Class,
3 spending more than 2,600 hours and resulting in a collective lodestar of \$1,874,297.30.

4 The requested multiplier is further justified because this case presented a significant risk of
5 non-payment. *Omnivision*, 559 F. Supp. 2d at 1047; *Vizcaino*, 290 F.3d at 1048. Data breach cases
6 are especially risky, expensive, and complex because data breach law is constantly evolving and
7 there are numerous hurdles that Plaintiffs must overcome before getting to trial, including class
8 certification and summary judgment. Establishing a cognizable injury tied to Cash App's conduct
9 (as opposed to, for instance, another data breach), could have presented serious challenges. *See, e.g.,*
10 *Krottner v. Starbucks Corp.*, 406 F.App'x 129 (9th Cir. 2010) (holding that, although plaintiffs
11 established injury-in-fact for standing purposes, they failed adequately to allege damages for
12 purposes of their negligence claim). Were the case to proceed in litigation, there would be numerous
13 expert reports, costly expert depositions, and *Daubert* proceedings that risk excluding Plaintiffs'
14 expert testimony. Further, there is a dearth of class action certification decisions in the data breach
15 context, so that class certification presents an especially heightened risk. Plaintiffs unquestionably
16 faced an uncertain road with another pending motion to dismiss, followed by class certification,
17 summary judgment, and any appeals.

18 That the considerable risks here were undertaken by Plaintiffs' Counsel on an entirely
19 contingent basis further justifies the requested multiplier. *See Stetson*, 821 F.3d at 1166; *Vizcaino*,
20 290 F.3d at 1050; *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), abrogated on
21 other grounds by *City of Burlington v. Dague*, 505 U.S. 557 (1992). "It is an established practice in
22 the private legal market to reward attorneys for taking the risk of non-payment by paying them a
23 premium over their normal hourly rates for winning contingency cases." *In re Washington Pub.*
24 *Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

25 Class Counsel's "substantial outlay" of time and money and the significant risk that none of
26 it would be recovered, further supports Class Counsel's requested modest multiplier. *Omnivision*,
27 559 F. Supp. 2d at 1047.

E. Class Counsel are Entitled to Reimbursement of Litigation Costs

Under well-settled law, Class Counsel are entitled to recover “out-of-pocket expenses that would normally be charged to a fee-paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal citation and quotation marks omitted). It is appropriate to reimburse Class Counsel for such expenses from the common fund. *See In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig.*, No. CV-87-3962, 1989 WL 73211, at *6 (C.D. Cal. Mar. 9, 1989). In common-fund cases, the Ninth Circuit has stated that the reasonable expenses of acquiring the fund can be reimbursed to counsel who has incurred the expense. *See Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Such expense awards comport with the notion that the district court may “spread the costs of the litigation among the recipients of the common benefit.” *Wininger v. SI Mgmt. L.P.*, 301 F.3d 1115, 1121 (9th Cir. 2002).

To date, Plaintiffs’ Counsel collectively incurred \$76,696.58 in unreimbursed litigation costs. Jt. Decl. ¶ 80. These costs were reasonably necessary for the prosecution and resolution of this litigation (Jt. Decl.¶ 82) and were incurred by Plaintiffs’ Counsel for the benefit of Class Members with no guarantee that they would be reimbursed. *See Staton*, 327 F.3d at 974 (class counsel entitled to reimbursement of expenses reasonably incurred). Plaintiffs’ Counsel’s litigation costs are reasonable in amount, and the Court should approve their reimbursement.

F. The Court Should Approve the Service Awards

“It is well-established in this circuit that named plaintiffs in a class action are eligible for reasonable incentive payments, also known as service awards.” *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198, 2017 WL 661352, at *4 (N.D. Cal. Feb. 17, 2017) (citation omitted). Service awards, which are discretionary, “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

The Court should grant the modest Service Awards of \$2,500 each to the Class Representatives to compensate them for the effort and risk entailed in pursuing this litigation. Jt. Decl. ¶ 19. The Class Representatives have been enthusiastic and active and have fought for the best interests

of the Class. Each of the Class Representatives actively participated in the litigation by: investigating the matter prior to and after retaining their respective attorneys; participating in the plaintiff vetting process implemented by Class Counsel; reviewing and approving their original complaints and the consolidated and amended complaints; participating in discovery by providing responses to interrogatories and collecting documents and gathering evidence in response requests for production served on each of them; and corresponding and communicating with counsel to monitor the progress of the litigation and settlement. *See* Jt. Decl. ¶ 48. Each put their name and reputation on the line for the sake of the Class, and no recovery would have been possible without their critical role. *Id.*

I. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court award Five Million Dollars in attorneys' fees, \$ 76,696.58 in costs, and the service awards of \$2,500 to each of the Class Representatives (\$7,500 in total).

Dated: August 15, 2024

/s/ Nicholas A. Migliaccio

Nicholas A. Migliaccio (admitted *pro hac vice*)

Jason S. Rathod (admitted *pro hac vice*)

MIGLIACCIO & RATHOD LLP

412 H St NE, Suite 302

Washington DC 20002

Telephone (202) 470-3520

nmigliaccio@classlawdc.com

jrathod@classlawdc.com

Melissa R. Emert (admitted *pro hac vice*)

Gary Graifman (admitted *pro hac vice*)

KANTROWITZ, GOLDHAMER

& GRAIFMAN, P.C.

135 Chestnut Ridge Road, Suite 200

Montvale, NJ 07645

Tel: (845) 356-2570

William B. Federman (admitted *pro hac vice*)

FEDERMAN & SHERWOOD

10205 N. Pennsylvania Ave.

Oklahoma City, OK 73120
Ph: 405-235-1560

Daniel E. Gustafson (admitted *pro hac vice*)
David A. Goodwin (admitted *pro hac vice*)
GUSTAFSON GLUEK PLLC
Canadian Pacific Plaza
120 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Tel: (612) 333-8844
dgustafson@gustafsongluek.com
dgoodwin@gustafsongluek.com

Scott. D Hirsch (admitted *pro hac vice*)
SCOTT HIRSCH LAW GROUP
6810 N. State Road 7
Coconut Creek, FL 33073
(561) 569-7062
scott@scotthirschlawgroup.com

*Attorneys for Plaintiffs
and the Putative Class*

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2024, I caused the foregoing to be filed electronically using the Court's electronic case filing (ECF) system, which will automatically send a notice of electronic filing to the email addresses of all counsel of record.

Dated: August 15, 2024

/s/ Nicholas A. Migliaccio
Nicholas A. Migliaccio